saalt
SOUTH ASIAN AMERICANS LEADING TOGETHER

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October 23, 2020
Lauren Alder Reid
Assistant Director,
Office of Policy Executive Office for Immigration Review 5107 Leesburg Pike, Suite 1800 Falls Church, VA 22041

Submitted via http://www.regulations.gov

> Re: Executive Office for Immigration Review, Department of Justice, Notice of Proposed Rulemaking: Procedures for Asylum and Withholding of Removal, (EOIR Docket No. 19–0010, RIN 1125–AA93)

Dear Ms. Reid:

South Asian Americans Leading Together (SAALT) submits the following comments in response to the above-referenced Executive Office for Immigration Review (EOIR) proposed rule, EOIR Docket No. 19-0010, Procedures for Asylum and Withholding of Removal, 85 FR 59692 (September 23, 2020) ("Proposed Rule").

South Asian Americans Leading Together (SAALT) is a national, nonpartisan, non-profit organization that advocates for the civil rights of all South Asian Americans in the United States. South Asians are one of the fasting growing immigrant populations in the United States. Over the past several years, SAALT and our partners have tracked an increase in South Asian asylum seekers along the U.S. Southern border. Since 2014, nearly 34,000 migrants apprehended along the U.S. border identified as originating from countries such as Bangladesh, Nepal, Pakistan, Sri Lanka, and India. South Asian asylum seekers are fleeing violence and persecution related to, among other issues, religion, political affiliation, caste, and gender. The Proposed Rule will drastically limit the ability of individuals to obtain asylum and withholding of removal in the United States. SAALT urges the agency to reconsider the Proposed Rule and withdraw it.

The United States has a long history of protecting those escaping danger, yet the NPRM seeks to target the most vulnerable individuals fleeing to the U.S. in search of safety. The rule imposes formidable new barriers to asylum which will severely impact pro se applicants and applicants in detention. It weights the scales heavily against asylum seekers, making it very difficult for many to receive a fair hearing in court.

Fundamental to the American system of justice is the guarantee of due process. But under this rule, thousands of asylum seekers would be denied that most basic right to a fair day in court. The regulation would give immigration judges - who are supposed to be neutral arbiters of the law - the ability to file evidence in asylum cases, even over the objections of the asylum seeker. The impact of this rule would fall most harshly on detained asylum seekers, the majority of whom must proceed without a lawyer.

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The new regulation would also impose an arbitrarily short deadline of 15 days from the date of an asylum seeker's first hearing in asylum or withholding only proceedings to file an asylum application. Under a previously proposed rule, this could apply to every asylum seeker who passes a credible fear interview. The asylum application form is long and complex. For people in immigration detention, many of whom do not have access to legal counsel, do not speak English, and are traumatized, this requirement will present an insurmountable barrier.

The rule would also make filing an asylum application far more onerous by imposing new requirements on many asylum seekers that the application be "complete" within 15 days - meaning that any application that does not contain an answer to every question on the form and does not include all required evidence listed in the instructions to the form will be rejected. The form itself is 10 pages long and includes hundreds of questions. The form instructions are 14 pages of dense legalese. Requiring asylum seekers who mostly do not speak English, especially those in detention and who likely may not have the benefit of legal counsel, to fill out every question on this form and comply with every detail in the instructions within 15 days is clearly intended to make it almost impossible for most asylum seekers to present their cases in court. Furthermore, in the case of South Asian asylum seekers, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) National Detainee Handbooks and other relevant application forms are not available in many South Asian languages and for ones that are available they are so inexpertly translated that they have been rendered illegible, imposing even more burdens on asylum seekers.

Furthermore, the regulation refuses to provide fee waivers for USCIS's new filing fee of $50 for all asylum applications and requires applicants to attach a physical fee receipt from USCIS in order for their applications to be deemed "complete." This will present an insurmountable barrier for many detained asylum seekers, who often do not have access to money or the means to send $50 in the mail. The only way to earn money while in detention is to do janitorial work in the detention facility, for which detainees are often paid as little as a dollar per day. For those who can send money, mail delays at detention centers make receiving a fee receipt within 15 days nearly impossible. This fee requirement will effectively prevent thousands from presenting their cases.

This regulation attempts to completely dismantle nearly every aspect of our asylum laws and seeks to eliminate critical pathways to humanitarian relief that our laws were designed to protect. The rule strikes at the very heart of our historic commitment to providing safe haven to people fleeing persecution and calls into question our integrity as a country.

SAALT strongly opposes the Proposed Rule because of the unfair burdens it will impose on vulnerable South Asian asylum seekers and all other individuals who deserve protection from persecution that may result in grave danger and potential death. These policy changes are choking off access to asylum and are fundamentally undermining the U.S. commitment to protect those fleeing persecution and harm. In addition, the Proposed Rule would make it more difficult for faith institutions, community organizations, and attorneys, to support asylum seekers, interfere with the efficient operation of the immigration courts, and hurt people who

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have non-asylum removal cases awaiting review before the immigration courts. We urge the agencies to reconsider the Proposed Rule and withdraw it entirely from consideration.

Sincerely,

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